PIL 84/2006
BEFORE
THE HON'BLE MR. JUSTICE D. BISWAS, CHIEF JUSTICE (ACTING)
THE HON'BLE MR. JUSTICE B.P. KATAKEY

JUDGMENT AND ORDER (CAV)

B.P. Katakey, J.

The public interest litigation as well as the writ petition in W.P.(C) No.5293/06 being related to the land belonging to Auniati Satra (in short, the Satra) and in both the PIL as well as in the writ petition the claim being the right over an alleged water tank and lease hold right claiming to be the lease holder under the Satra, are taken up together for hearing and disposal, as agreed to by the learned counsel appearing for the parties.

2. In P.I.L. No.84/06, the petitioners, Sri Bikash Roy and Sri Amrendra Adhikary, who are the Secretaries of Greater Fatashil Wetland Preservation Committee and Fatashil Gauri Sharma Colony Nagarik Unnayan Samity respectively, are praying for a direction for preservation of water tank and for declaration of the same as a wetland, pursuant to the Government notification dated 31.05.1995 (Annexure-8), for removal of the earth filling in the water tank and also for directing the respondents not to transfer the plot comprising the water tank by way of sale, gift, lease or mortgage etc., contending inter alia that about 200 number of persons are in occupation of around 60 Bighas 7 Lechas of land belonging to the Satra as tenants for more than 30 to 40 years on the strength of various deeds of lease executed by the Satra, which land also comprise a water tank over a plot of land measuring about 6.5 Bighas, which act as a natural reservoir of rain water and only source of natural water in the area and is being used by the local residents. It has further been contended that the said water tank was leased out in the year 1970 to Smti Sushila Bala Devi and her two sons, where a fishery was started, who subsequently handed over the possession to the Satra, which, the Satra is trying to sale to the 4th respondents, namely M/s Balaji Circle, as application seeking permission for sale of the entire plot of land comprising the water tank has been filed, which the petitioner No.2 objected, before the Gauhati Metropolitan Development Authority (GMDA) as well as the Sub-Registrar. It has further been contended that the said action of the Satra is in complete disregard to the interim order passed on 30.10.2006 in W. P. (C) No.5293/06, directing the parties to maintain status-quo, which writ petition has been filed by the lease holders under the Satra for directing the respondents therein to complete the acquisition proceeding of the land measuring 60 Bighas 7 Lechas including the water tank, under the provisions of the Assam State Acquisition of Lands belonging to Religious or Charitable Institutions of Public Nature Act, 1959 (in short, the 1959 Act) and also for settlement of the land under the possession of the writ petitioners in the said writ petition in terms of the Government policy as well as the provision contained in Section 15 of the said Act. The petitioners in the P.I.L. has also contended that they have also challenged the purported action of the Satra in trying to transfer the land measuring 6.5 Bighas, which comprises the water tank and which is part of the 60 Bighas 7 Lechas of land under the possession of the tenants, by way of sale, in W.P.(C) No.5293/06. The petitioners, therefore, seek a direction and/or appropriate order for preservation and conservation of the water tank for maintenance of the eco-system of the locality.

3. The petitioners, in W. P. (C) No.5293/06 are praying for a direction to the respondent authorities to complete the acquisition proceeding under the provisions of 1959 Act and to settle the same in their favour in terms of the Government policy as well as the provisions contained in the said Act, contending inter alia that a proceeding under the provisions of the 1959 Act was initiated for acquisition of the land belonging to the Satra but the said proceeding h

as not been completed though the Satra surrendered a vast area of land including the land measuring 60 Bighas 7 Lechas of village Fatashil, Guwahati, which land the petitioner claims to be in possession as tenant under the Satra and also comprises the water tank, which is the subject matter in P.I.L. No.84/06. It has further been contended that for the said plot of land apart from other lands, draft as well as final statement as required under Section 20 of 1959 Act has been published, after disposal of the appeal preferred by the Satra under Section 20 (3) of the Act and inspite of the communication dated 09.02.1994 issued by the Satradhikar of the respondent No.3 Satra, no final notification as required under Section 3 of the said Act has been issued, thereby, depriving the petitioners from getting settlement under Section 15 of the said Act, though the Secretary to the Government of Assam, Revenue Department vide communication dated 21.07.2005 asked the Deputy Commissioner, Kamrup to finalized the same. In the said writ petition M/s Balaji Circle, the 4th respondent in the P.I.L. has been impleaded in terms of the order dated 13.12.2006 passed in Misc. Case No.4097/06 filed by it.

4. The respondent No.1 (the State of Assam), the respondent No.2 (the Deputy Commissioner), the respondent No.3 (the Satra) and the respondent No.4 (M/s Balaji Circle) filed their affidavits in the P.I.L. However, except the newly added respondent No.4 (M/s Balaji Circle), the other respondents have not filed any affidavit-in-opposition in W.P.(C) No.5293/06. However, on the basis of the prayer made by the learned counsel appearing on behalf of the said respondents and not opposed by the learned counsel for the writ petitioners, affidavits filed in P.I.L. have also been treated as affidavit in W.P.(C) No.5293/06.

5. We have heard Mr. S. Medhi, the learned counsel appearing on behalf of the petitioners, Mrs. Goyal, the learned State counsel appearing for the respondents No.1 and 2., Mr. D.C. Mahanta, the learned Sr. counsel appearing on behalf of the respondent No.3 as well as Mr. B.K. Goswami, the learned Sr. counsel appearing on behalf of the respondent No.4 in both the cases. We have also perused the records produced by the learned State counsel.

6. It appears from the statements made in the petition filed in P.I.L., as discussed above, that the petitioners claim settlement of 60 Bighas 7 Lechas of land in Fatashil area of Guwahati, which according to them comprises a water tank over an area of 6.5 Bighas. The petitioners in the P.I.L. has also stated that for the entire 60 Bighas 7 Lechas of land, claiming finalization of acquisition proceeding under the 1959 Act and for settlement, they have also filed the writ petition in W.P.(C) No.5293/06. The statement made in the P.I.L. further reveals that the P.I.L. has been filed only because the Satra is contemplating to transfer the plot of land comprising the water tank in favour of the 4th respondent for which necessary permission has already been applied for and according to the petitioners, in violation of the order of status quo order passed in W.P.(C) No.5293/06. From such statement made in the P.I.L., it is, therefore, evident that the persons stated to be the tenant under the Satra in respect of 60 Bighas 7 Lechas of land are claiming settlement under the provisions of 1959 Act, claiming to be the tenant under the Satra, on finalization of the acquisition proceeding under the provisions of the said Act, which land includes the tank, though the petitioners in the P.I.L. is trying to give the colour of a public interest by stating that non-preservation of tank would disturb the eco-logical balance in the locality.

7. The petitioners in the P.I.L., also claims preservation of a water tank, which claims to be existed and for declaration of the same as wetland pursuant to the Government notification dated 31.05.1995, which was issued by the Secretary to the Government of Assam, Revenue (Settlement) Department authorizing the Deputy Commissioner of all districts, excluding the two hills districts, to declare all the wetland in the respective districts as reserve wetland by following the spirit of Rule 83 to 96 of the Settlement Rules framed under the Assa

m Land and Revenue Regulation, 1886, considering the eco-logical importance of t he wetland like morshes, begs, flood plains, beels, peetland, old and abandoned river courses, shallow ponds etc. and for the necessity of conserving the biolog ical diversity and for preserving the water quality etc.

8. Rules 83 to 96 of the Settlement Rules framed under Assam Land and Revenue Regulation, 1886 lays down the procedure for survey and demarcation of grazing grounds, declaration thereof as well as the manner of using the same. It also provides for cancellation of allotment of such grazing grounds.

9. It has been contended by the learned counsel appearing on behalf of the petitioners, placing reliance on the communication dated 01.07.2003 issu ed by the Circle Officer, Dispur Revenue Circle to the Deputy Commissioner, Kamr up (Metro), whereby a complete list of leaseholders (possessors) in respect of t he land belonging to the Satra covered by various dags of patta No. 5 and 84 of town Fatashil Part-I, Mauza Beltola has been forwarded along with the map, that there is a water tank (pond) over 6.5 Bighas of land belonging to the Satra in D ag No.175 of Patta No.84, which exists from time immemorial and has been used by the inhabitants of the locality and if the same is transferred and filled up by the transferee, it will have an adverse affect on the environment causing eco-l ogical imbalance. The existence of the very water tank has however, been denied by the Satra in their affidavit filed in the P.I.L., wherein the Satra, apart fr om denying the occupation of 280 numbers of persons over 60 Bighas 7 Lechas of l and for more than 30 to 40 years as the tenant, under the Satra, has stated that the entire land measuring 60 Bighas 7 Lechas covered by Kheraj Patta No.5 is th e Basti land, which stands in the name of the Satra, having not been acquired by the Government under the provisions of 1959 Act or under any other law. The Sat ra, in the affidavit has further denied the existence of any water tank within t he 60 Bighas 7 Kathas of land claimed to be under possession of the tenants havi ng emphatically stated that there is no water tank as alleged and no lease was g ranted to Sushila Bala Devi and her two sons in respect of the water tank. It ha s further been stated in the said affidavit that the Satra has transferred the o wnership in respect of 3 Bighas of land out of the said 60 Bighas 7 Lechas of la nd to the respondent No.4 by executing registered sale deeds after obtaining nec essary permission from the competent authority, who in tern started filling up o f the land immediately after purchasing the same. The 4th respondent, namely the transferee of the said 3 Bighas of land, in their affidavit has also disputed t he existence of any water tank over 6.5 Bighas of land, leasing out the same to any person, and further denying that it is a natural reservoir of water. The 4th respondent, in their affidavit has further stated that the said land, which is stated to be a water tank, has been classified as 2nd Class Basti land in the re venue records and the Satra through its constituted attorney after obtaining nec essary permission from the competent authority, sold 3 Bighas of land by executi ng two sale deeds on 16.10.2006 and 06.11.2006 and, thereafter, they started the work of filling up of the land as it was low lying land full of water hyacinths but subsequently stopped because of the interim direction to maintain status qu o issued in W.P.(C) No.5293/06. The respondents No.1 and 2, in their affidavits have also stated that a plot of land measuring 3 Bighas in Dag No.174 of Kheraj Patta No.84 has already been sold to respondent No.4, i.e. Balaji Circle, by way of registered sale deeds after obtaining necessary permission from the competen t authority, out of the land comprising in the said dag, which is a low lying ar ea.

10. From the statements made in the PIL as well as the affidavits fi led by the respondents therein, it, therefore, transpires that there is a disput e about the existence of any water tank, which according to the petitioners, is the water tank and according to the respondents, is the low lying area. The reco rds produced before this Court by the respondents No.1 and 2 also reveals that t he said land is classified as 2nd Class Basti land and not as water tank. On the basis of the communication dated 01.07.2003 issued by the Circle Officer, Dispu

r Revenue Circle to the Deputy Commissioner, Guwahati (Annexure-9 to the PIL), o n which the learned counsel for the petitioners in PIL has placed reliance in su pport of his contention about the existence of the water tank, it is not possibl e to record any finding in this proceeding about in existence of a water tank, i n view of the revenue record produced by the respondents No.1 and 2, classifying the same as 2nd Class Basti land. Such disputed question of fact cannot been de cided in a PIL, as it requires detailed examination of evidence to be adduced, w hich can only be conveniently dealt with in a suit before an appropriate Civil C ourt having jurisdiction. The contention of the petitioners in the PIL that as t here is a water tank which requires preservation to maintain the eco-logical bal ance and has to be preserved pursuant to the Government notification dated 31.05 .1995, cannot, therefore, be decided in the present proceeding, unless the dispu ted question regarding the existence of such a tank is decided in the civil suit . That apart, it appears from the statements made in the affidavits filed by the respondents No.3 and 4, which has not been controverted by the petitioners by f iling in reply affidavit, that a portion of such land, which the petitioner clai ms to be water tank, has already been sold out by respondent No.3 in favour of r espondent No.4, through their constituted attorney, by registered deeds of sale and unless those deeds are challenged in a proper proceeding before a Civil Cour t, the prayer made in the PIL cannot be granted. The Decision of the Calcutta Hi gh Court in People United for Better Living in Calcutta Public & Anr. -Vs.- Stat e of West Bengal & Ors. reported in AIR 1993 Calcutta 215 regarding the need for protection of wetland for proper maintenance of environmental equilibrium need not be gone into in the present proceeding, in view of the aforesaid discussion.

11. The relief sought for in the PIL, therefore, cannot be granted. However, it will not preclude the aggrieved party from approaching the appropria te Civil Court of competent jurisdiction for redressal of their grievances in ac cordance with law.

12. In W.P.(C) No.5293/06, the claim of the petitioners as discussed above, is for completion of the acquisition proceeding in respect of the land b elonging to the Satra in the district of Kamrup including the land measuring 60 Bighas 7 Lechas in Fatashil area in Guwahati city and for settlement of the same in terms of the Government policy and the provision of Section 15 of the 1959 A ct, contending that about 280 families including the petitioners are occupying t he said land as tenants under the Satra and though the draft statement prepared and published under Section 20 (2) of 1959 Act has been finally prepared by the Deputy Commissioner as required under Section 20 (6) of the said Act, after disp osal of the appeal preferred by the Satra under Section 20 (3) before the Govern ment, against the draft statement, final notification as required under Section 3 of the said Act has not been issued.

13. The Satra though has disputed creation of any tenancy in favour of the petitioners in the writ petition, has not disputed the possession of the petitioners over some land belonging to the Satra in the said locality. The Stat e respondents, in the affidavit filed in PIL has also not denied the possession of the petitioners over the land, however, has stated that the said land stands in the name of the Satra in the revenue records. The respondents No.1 and 2 has also admitted in the affidavit that a proposal of acquisition of certain land in cluding the land in question measuring 60 Bighas 7 Lechas in Sahar Fatashil Part -I was initiated under the provisions of 1959 Act by the Additional Deputy Commi ssioner but no final notification has been issued as required under the said Act . The respondent No.1, i.e. the State of Assam, in the affidavit has also stated that altogether 177 families are occupying the major part of the land out of 60 Bighas 1 Katha 7 Lechas standing in the name of the Satra, covered by Patta No. 5 and 84 in Sahar Fatashil Part-I in Beltola Mouza by constructing dwelling hous es.

14. The petitioners in the writ petition have admitted that no notification under Section 3 of the 1959 Act has been issued by the State Government declaring that all rights in the land belonging to the Satra vest in the State free from all encumbrances.

15. It appears from the pleadings of the parties that the final notification is yet to be issued, which is also evident from the communication dated 19.06.1992 (Annexure-2 to the writ petition) issued by the Deputy Secretary to the Government of Assam, Revenue (Reforms) Department, asking the Deputy Commissioners of different districts to take up the acquisition proceeding as per the provisions of Section 18, 19 and 20 of the 1959 Act, in respect of the land belonging to the Satra. There is also no dispute that the draft statement was published as required under Section 20 (2) of the said Act against which the Satra filed an appeal under Section 20 (3) and the same was disposed of by the Government vide order dated 21.07.1976. According to the petitioners, the final order was, thereafter, passed by the Additional Deputy Commissioner as required under Section 20 (6) of this Act vide order issued under Memo No.45/93 dated 30.05.1995. The Additional Deputy Commissioner in the affidavit filed on behalf of the Deputy Commissioner has also admitted that on 12.04.1995 a proposal for acquisition of land belonging to the Satra under the 1959 Act was mooted to the Government but no final order has been passed by the Government so also no notification has been issued.

16. It is not the case of the petitioners that the draft statement was republished in the Office of the Deputy Commissioner, Sub-Divisional Officer, Sub-Deputy Collector and the copy thereof has been served on the Satra as required under Section 20 (6) of 1959 Act. It appears from the order passed by the Additional Deputy Commissioner (Annexure-4 to the writ petition), which is the basis for the petitioners to contend that the final order as required under Section 20 (6) has been passed, that order was sent to the concerned authority for publication in the Assam Gazette and the copy of the same with the final statement was directed to be sent to the concerned officers, Mouzadars and Satra Authority as required under the said provision. The record produced before this Court does not reveal the publication of such final statement as required under Section 20 (6) of the 1959 Act. Moreover, it appears from the communication dated 21.07.2005 issued by the Secretary to the Government of Assam, Revenue Department, (Annexure-7 to the writ petition), on which the petitioners have also placed reliance, that the acquisition proceeding under the provisions of 1959 Act is yet to complete as the Secretary, Revenue Department, Government of Assam by the said communication directed the Deputy Commissioner, Kamrup (Metro) to enquire into the matter and submit the report. The said communication, for better appreciation, is quoted below: -

GOVERNMENT OF ASSAM
REVENUE (REFORMS) DEPARTMENT, DISPUR

No. PRT. 188/95/100 Dated: Dispur, the 21s July, 2005

From: Shri K.K. Hazarika, IAS.,
Secretary to the Government of Assam.

To: The Deputy Commissioner,
Kamrup (Metro), Guwahati.

Sub: Land of Auniati Satra.

Ref: Letter No.PRT.188/95/104 dated 04.02.2002 and reminders thereof.

Sir,

In inviting a reference to the subject quoted above, I am directed to sa y that the mater of acquisition of land of Auniati Satra under the Assam State A cquisition of Lands Belonging to Religious or Charitable Institutions of Public Nature Act, 1959 (as amemded) (hereafter referred to as the Act) is pending for a long time. In view of the prayer submitted by the Satradhikar Auniati Satra as seen from the Department's record, to retain 63 Bighas of land in natun Sahar F atasil, you were requested to enquire into the matter and submit reports. But so far the matter has not been disposed off for want of the report. Meanwhile, the Department have received nos of petitions praying correction of land records wh ich were either purchased from the Satra or leased out by the Satra at different dates.

You are therefore, requested to take up the matter of the said land of N atun Town Fatasil and finalise the followings:

i. Those lands over which the Satra had no possession as required under Sec tion 5 (i) of the Act on or before the first day of Baishakha 1365 cannot be ret ained by the Satra and hence should be acquired.

ii. The title and possession of land transferred by the Satra to any eligibl e persons under registered sale deed cannot be retained by the Satra. As such th ese lands should be taken up for mutation as per procedure provided in the Reven ue Law.

iii. Any land leased out to a person in exchange or rent as fixed under Secti on 2(i) of the Act for a definite period which is either still continuing or exp ired but the payment of rent by the reassess to the Satra is still going on shal l be considered as tenants of the Satra and hence the tenancy should be acquired and settled under Section 15 of the Act following the recent Government directi ons.

iv. Any land leased out for a definite period which has already been expired and now under the possession of Satra or the leassee is not paying any rent to the Satra as required under Section2 (j) should be considered as retainable land of the Satra.

v. Other tenanted land should be acquired and distributed following the pro visions of the Act and recent Government guidelines under circulation.

vi. Land encroached by the encroachers should be acquired as per procedure.

Utmost care should be taken while settling land and the directions given in the provision under Section 15 (a) of the Act should be strictly adhered to. These tasks should be completed within two months and notification for acquisit ion of the land should be made afresh along with the other lands of the Satra.

The receipt of this letter may kindly be acknowledged.

Yours faithfully

Secretary to the Government of Assam
Revenue Department, Dispur.

17. It is not in dispute that the draft statement as required under Section 20 (2) of the 1959 Act was published and the Satra, thereafter, filed an appeal under Section 20 (3) of the said Act, which was disposed of vide order d ated 21.07.1976. But fact remains that the said proceeding has not attained fina lity as the notification under Section 3 of the said Act is yet to be issued, wh ich factual position has also not been disputed by the writ petitioners and rath er admitted in the writ petition.

18. Section 3 (1) of the 1959 Act requires issuance of notification in the manner provided therein, to vest any land under the provision of the said Act, on the Government free from all encumbrances. The proceeding under Section 15 of the said Act can only, thereafter, be initiated for settlement of such land with the raiyat, who are in occupation, on the date of issuance of notification under Section 3 and not before that. The claim of the petitioners in the writ petition being for finalization of the acquisition proceeding under the said Act and for settlement under Section 15 thereof, claiming that they are raiyats in possession of the land, in view of the aforesaid undisputed fact and also the communication dated 21.07.2005 issued by the Secretary to the Government of Assam, Revenue Department (Annexure-7 to the writ petition), we dispose of the present writ petition with the direction to the respondents No.1 and 2 to finalize the acquisition proceeding initiated in respect of the land belonging to the Satra, more particularly, the land in Kamrup district, in the light of the orders passed by the competent authority and also the aforesaid communication dated 21.07.2005 (Annexure-7), as expeditiously as possible, preferably within a period of six months from today.

19. The pleadings of the parties further reveal that though the draft statement, as required under Section 20 (2) of the Act was published and the appeal preferred by the Satra under Section 20 (3) was finalized as back as on 21.07.1976, the authorities yet to complete the proceeding initiated under the provisions of 1959 Act and have kept the same pending for last more than 30 years and, in the meantime, taking advantage of non finalization of such proceeding and non publication of the notification as required under Section 3 of the 1959 Act, the Satra is transferring ownership of the land to other persons, which, if allowed to be continued, will frustrate the very object and purpose for which the 1959 Act has been enacted. Therefore, we direct the respondent No.3, Satra not to transfer, henceforth, either by way of sale, gift, lease or in any manner and not to encumber any land belonging to it in any way, either by itself or through its constituted attorney, till finalization of the proceeding under the provisions of 1959 Act and publication of the notification under Section 3 of the said Act, as directed above.

20. In view of the aforesaid discussion, the PIL stands dismissed and the writ petition stands disposed of. No cost.